

Montana Water Court
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FILED
01/30/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41K-2001-R-2021
Block, Nathaniel
12.00

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
SUN RIVER BASIN (41K)

* * * * *

CLAIMANT: TBR LLC

OBJECTOR: United States of America (Bureau of Land
Management)

CASE 41K-2001-R-2021

41K 30107002
41K 30108503
41K 30108504
41K 30108505
41K 30108506
41K 30108507

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER’S REPORT
FINDINGS OF FACT

1. The above-captioned claims appeared in the Preliminary Decree for the Sun River (Basin 41K) with issue remarks. The United States (Bureau of Land Management) (“BLM”) filed Objections to the claims. TBR, LLC (“TBR”) filed a series of Motions to Amend in response to the Objections.

2. On July 15, 2022, the above-captioned claims were consolidated into Water Court Case 41K-2001-R-2021 and this Court issued an Order Setting Filing Deadline requiring the BLM to file documentation indicating whether TBR’s Motions resolved the BLM’s Objections.

3. On August 12, 2022, the BLM filed a Response to Order Setting Filing Deadline. The filing indicated that the BLM’s Objections would be resolved by the placement of a remark clarifying the Place of Use as requested by TBR’s Motions to Amend. On September 30, 2022, TBR filed a Response to Resolve Issue Remarks on All Claims, providing additional information needed to resolve the issue remarks on the above-captioned claims.

4. Pursuant to the Motions to Amend, the following remark should be placed on the above-captioned claims:

**THE PLACE OF USE IS LOCATED ENTIRELY ON PRIVATE LAND AND
DOES NOT INCLUDE THOSE FEDERAL LANDS LOCATED IN SECTION 4
OF TOWNSHIP 20 NORTH, RANGE 3 WEST.**

5. Pursuant to the Response to Resolve Issue Remarks, claim 41K 30107002 should be modified as follows:

Ditch Name: Floweree (~~Hamilton~~) Canal

6. Pursuant to the Response to Resolve Issue Remarks, claim 41K 30108503 should be modified as follows:

<u>POD ID</u>	<u>Ditch Name</u>
1	<u>Alfalfa Ditch</u>
2	<u>Garden Ditch</u>

3

Floweree Canal

7. Pursuant to the Response to Resolve Issue Remarks, claim 41K 30108504 should be modified as follows:

POD ID

Ditch Name

1

Floweree Canal

2

Floweree Canal

3

Alfalfa Ditch

8. Pursuant to the Response to Resolve Issue Remarks, claim 41K 30108505 should be modified as follows:

POD ID

Ditch Name

1

Floweree Canal

2

Garden Ditch

3

Alfalfa Ditch

9. Pursuant to the Response to Resolve Issue Remarks, claim 41K 30108506 should be modified as follows:

POD ID

Ditch Name

1

Garden Ditch

2

Alfalfa Ditch

3

Floweree Canal

10. Pursuant to the Response to Resolve Issue Remarks, claim 41K 30108507 should be modified as follows:

POD ID

Qtr Sec Sec Twp Rge County

1

NWSENE 21 21N 4W Teton

Ditch Name:

Floweree Canal

2

S2NESE 21 21N 4W Teton

Ditch Name:

Lowry Lake Lateral

3

SEWNNE 32 21N 4W Teton

Ditch Name:

Unnamed Ditch

PRINCIPLES OF LAW

1. The Montana Water Court has the authority to determine the extent of all water rights in the state as they existed prior to July 1, 1973. *Fellows v. Saylor*, 2016 MT 45, ¶ 25, 382 Mont. 298, 367 P.3d 732; §§ 85-2-233, -102(12), MCA.

2. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. § 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

CONCLUSIONS OF LAW

1. The modifications discussed above resolve the issue remarks appearing on the above-captioned claims. The addition of the Place of Use remark on the claims resolves the BLM Objections.

RECOMMENDATIONS

1. Upon review of the record in this case, the above-captioned claims should be modified as discussed above. The issue remarks should be removed from the claims.

Post Decree Abstracts of Water Right Claims are attached to this Master's Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

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**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
SUN RIVER
BASIN 41K**

Water Right Number: 41K 30107002 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: TBR LLC
PO BOX 40
SIMMS, MT 59477 0040

Priority Date: JANUARY 30, 1919

Type of Historical Right: USE

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 0.06 CFS
(27.00 GPM)

Volume: 6.60 AC-FT- VOLUME RETAINED BY THE WATER COURT

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 112.63

Source Name: CUTTING SHED COULEE

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NESESW	30	21N	5W	TETON

Period of Diversion: APRIL 15 TO NOVEMBER 4

Diversion Means: HEADGATE

Ditch Name: FLOWEREE CANAL

Period of Use: APRIL 15 TO NOVEMBER 4

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	34.96		SESW	4	20N	3W	TETON
2	9.97		SWNE	4	20N	3W	TETON
3	0.33		SENE	4	20N	3W	TETON
4	16.06		NWSE	4	20N	3W	TETON
5	26.99		NESE	4	20N	3W	TETON
6	8.04		NESW	4	20N	3W	TETON
7	16.28		NWSW	4	20N	3W	TETON

Total: 112.63

THE PLACE OF USE IS LOCATED ENTIRELY ON PRIVATE LAND AND DOES NOT INCLUDE THOSE FEDERAL LANDS LOCATED IN SECTION 4 OF TOWNSHIP 20 NORTH, RANGE 3 WEST.

Remarks:

THIS SPLIT CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 41K 96612-00.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
SUN RIVER
BASIN 41K**

Water Right Number: 41K 30108503 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: TBR LLC
PO BOX 40
SIMMS, MT 59477 0040

Priority Date: MAY 1, 1891

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 76.30 GPM

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 3 - MODERATE

Maximum Acres: 112.63

Source Name: SUN RIVER

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWNWNW	11	20N	5W	TETON
Period of Diversion:	MARCH 15 TO NOVEMBER 19					
Diversion Means:	HEADGATE					
Ditch Name:	ALFALFA DITCH					
2		NENWSW	2	20N	4W	TETON
Period of Diversion:	MARCH 15 TO NOVEMBER 19					
Diversion Means:	HEADGATE					
Ditch Name:	GARDEN DITCH					
3		NWNESW	20	21N	6W	TETON
Period of Diversion:	MARCH 15 TO NOVEMBER 19					
Diversion Means:	HEADGATE					
Ditch Name:	FLOWEREE CANAL					
Period of Use:	MARCH 15 TO NOVEMBER 19					

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	26.99		NESE	4	20N	3W	TETON
2	8.04		NESW	4	20N	3W	TETON
3	16.06		NWSE	4	20N	3W	TETON

4	16.28	NWSW	4	20N	3W	TETON
5	0.33	SENE	4	20N	3W	TETON
6	34.96	SENW	4	20N	3W	TETON
7	9.97	SWNE	4	20N	3W	TETON
Total:						
	112.63					

THE PLACE OF USE IS LOCATED ENTIRELY ON PRIVATE LAND AND DOES NOT
INCLUDE THOSE FEDERAL LANDS LOCATED IN SECTION 4 OF TOWNSHIP 20
NORTH, RANGE 3 WEST.

Remarks:

THIS SPLIT CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 41K
187156-00.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
SUN RIVER
BASIN 41K**

Water Right Number: 41K 30108504 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: TBR LLC
PO BOX 40
SIMMS, MT 59477 0040

***Priority Date:** DECEMBER 31, 1915

***Type of Historical Right:** FILED

***Purpose (use):** IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

***Flow Rate:** 53.86 GPM

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 3 - MODERATE

***Maximum Acres:** 112.00

***Source Name:** SCHOOL SECTION COULEE

Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NESWNW	26	21N	5W	TETON

Period of Diversion: MARCH 15 TO NOVEMBER 15

Diversion Means: HEADGATE

Ditch Name: FLOWEREE CANAL

2		SWNESW	26	21N	5W	TETON
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Period of Diversion: MARCH 15 TO NOVEMBER 15

Diversion Means: HEADGATE

Ditch Name: FLOWEREE CANAL

3		NWNENW	5	20N	4W	TETON
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Period of Diversion: MARCH 15 TO NOVEMBER 15

Diversion Means: HEADGATE

Ditch Name: ALFALFA DITCH

***Period of Use:** MARCH 15 TO NOVEMBER 15

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	35.00		SENW	4	20N	4W	TETON
2	10.00		SWNE	4	20N	3W	TETON
3	16.00		NWSE	4	20N	3W	TETON

4	27.00	NESE	4	20N	3W	TETON
5	8.00	NESW	4	20N	3W	TETON
6	16.00	NWSW	4	20N	3W	TETON
Total:						
	112.00					

THE PLACE OF USE IS LOCATED ENTIRELY ON PRIVATE LAND AND DOES NOT
INCLUDE THOSE FEDERAL LANDS LOCATED IN SECTION 4 OF TOWNSHIP 20
NORTH, RANGE 3 WEST.

Remarks:

THIS SPLIT CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 41K
187157-00.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
SUN RIVER
BASIN 41K**

Water Right Number: 41K 30108505 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: TBR LLC
PO BOX 40
SIMMS, MT 59477 0040

***Priority Date:** JANUARY 16, 1900

***Type of Historical Right:** DECREED

***Purpose (use):** IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

***Flow Rate:** 394.94 GPM

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 3 - MODERATE

***Maximum Acres:** 112.63

***Source Name:** SUN RIVER

Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWNESW	20	21N	6W	TETON
Period of Diversion:	MARCH 15 TO NOVEMBER 15					
Diversion Means:	HEADGATE					
Ditch Name:	FLOWEREE CANAL					
2		NENWSW	2	20N	4W	TETON
Period of Diversion:	MARCH 15 TO NOVEMBER 15					
Diversion Means:	HEADGATE					
Ditch Name:	GARDEN DITCH					
3		SWNWNW	11	20N	5W	TETON
Period of Diversion:	MARCH 15 TO NOVEMBER 15					
Diversion Means:	HEADGATE					
Ditch Name:	ALFALFA DITCH					

***Period of Use:** MARCH 15 TO NOVEMBER 15

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	26.99		NESE	4	20N	3W	TETON
2	8.04		NESW	4	20N	3W	TETON
3	16.06		NWSE	4	20N	3W	TETON

4	16.28	NWSW	4	20N	3W	TETON
5	0.33	SENE	4	20N	3W	TETON
6	34.96	SENW	4	20N	3W	TETON
7	9.97	SWNE	4	20N	3W	TETON
Total:						
	112.63					

THE PLACE OF USE IS LOCATED ENTIRELY ON PRIVATE LAND AND DOES NOT
INCLUDE THOSE FEDERAL LANDS LOCATED IN SECTION 4 OF TOWNSHIP 20
NORTH, RANGE 3 WEST.

Remarks:

THIS SPLIT CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 41K
187161-00.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
SUN RIVER
BASIN 41K**

Water Right Number: 41K 30108506 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: TBR LLC
PO BOX 40
SIMMS, MT 59477 0040

Priority Date: APRIL 1, 1871

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 22.44 GPM

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 3 - MODERATE

Maximum Acres: 112.63

Source Name: SUN RIVER

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENWSW	2	20N	4W	TETON

Period of Diversion: MARCH 15 TO NOVEMBER 19

Diversion Means: HEADGATE

Ditch Name: GARDEN DITCH

2		SWNWNW	11	20N	5W	TETON
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Period of Diversion: MARCH 15 TO NOVEMBER 19

Diversion Means: HEADGATE

Ditch Name: ALFALFA DITCH

3		NWNESW	20	21N	6W	TETON
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Period of Diversion: MARCH 15 TO NOVEMBER 19

Diversion Means: HEADGATE

Ditch Name: FLOWEREE CANAL

Period of Use: MARCH 15 TO NOVEMBER 19

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	26.99		NESE	4	20N	3W	TETON
2	8.04		NESW	4	20N	3W	TETON
3	16.06		NWSE	4	20N	3W	TETON

4	16.28	NWSW	4	20N	3W	TETON
5	0.33	SENE	4	20N	3W	TETON
6	34.96	SENW	4	20N	3W	TETON
7	9.97	SWNE	4	20N	3W	TETON
Total:						
	112.63					

THE PLACE OF USE IS LOCATED ENTIRELY ON PRIVATE LAND AND DOES NOT
INCLUDE THOSE FEDERAL LANDS LOCATED IN SECTION 4 OF TOWNSHIP 20
NORTH, RANGE 3 WEST.

Remarks:

THIS SPLIT CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 41K
187162-00.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
SUN RIVER
BASIN 41K**

Water Right Number: 41K 30108507 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: TBR LLC
PO BOX 40
SIMMS, MT 59477 0040

Priority Date: JANUARY 30, 1919

Type of Historical Right: USE

Purpose (use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 26.93 GPM

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 3 - MODERATE

Maximum Acres: 112.00

Source Name: ELBOW COULEE

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWSENE	21	21N	4W	TETON

Period of Diversion: MARCH 15 TO NOVEMBER 19

Diversion Means: DITCH

Ditch Name: FLOWEREE CANAL

2		S2NESE	21	21N	4W	TETON
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Period of Diversion: MARCH 15 TO NOVEMBER 19

Diversion Means: DITCH

Ditch Name: LOWERY LAKE LATERAL

3		SEWNNE	32	21N	4W	TETON
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Period of Diversion: MARCH 15 TO NOVEMBER 19

Diversion Means: DITCH

Ditch Name: UNNAMED DITCH

Period of Use: MARCH 15 TO NOVEMBER 19

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	27.00		NESE	4	20N	3W	TETON
2	8.00		NESW	4	20N	3W	TETON
3	16.00		NWSE	4	20N	3W	TETON

4	16.00	NWSW	4	20N	3W	TETON
5	35.00	SENW	4	20N	3W	TETON
6	10.00	SWNE	4	20N	3W	TETON
Total:						
	112.00					

THE PLACE OF USE IS LOCATED ENTIRELY ON PRIVATE LAND AND DOES NOT
INCLUDE THOSE FEDERAL LANDS LOCATED IN SECTION 4 OF TOWNSHIP 20
NORTH, RANGE 3 WEST.

Remarks:

THIS SPLIT CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 41K
30051446.